

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2007

CORAM

THE HONOURABLE MR.JUSTICE P.K.MISRA
AND
THE HONOURABLE MRS.JUSTICE R.BANUMATHI

H.C.P.No.980/2007

Daisy ... Petitioner

Vs.

State rep. By
Superintendent of Police,
Central Prison, Chennai. ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus to direct the respondent not to handcuff the detenu Bishop Anand Raj during transit to Courts and set him at liberty.

For Petitioner : Mr.R.Sankarasubbu

For Respondent: Mr.Babu Muthu Meeran, Addl.PP.

O R D E R

(Order of the Court was made by R.BANUMATHI, J.)

The petitioner has filed this Habeas Corpus Petition seeking direction to the respondent not to handcuff her husband detenu Bishop Anand Raj during his transit to Court.

2.Heard counsel for the parties.

3.The Supreme Court in the decisions reported in Sunil Batra v. Delhi Administration (1978(4) SCC 494) and Prem Shankar Shukla v. Delhi Administration (1980 (3) SCC 526), has elaborately dealt with situations when the police and jail authorities can resort to handcuffing of the prisoners inside and outside the jail. In Citizens for Democracy Case, the Supreme Court took note of instances where the authorities have not followed the direction of the Court and are using handcuffs and other fetters indiscriminately and without any justification. Observing that handcuffing of prisoners is inhuman and in utter violation of human rights guaranteed in the International Law and Law of the

land, in 1995(3) SCC 743 [Citizens for Democracy Vs.State of Assam and others], the Supreme Court issued the following directions for strict compliance :-

"16.We declare, direct and lay down as a rule that handcuffs or other fetters shall not be forced on a prisoner - convicted or undertrial - while lodged in a jail anywhere in the country or while transporting or in transit from one jail to another or from jail to Court and back. The police and the jail authorities, on their own, shall have no authority to direct the handcuffing of any inmate of a jail in the country or during transport from one jail to another or from jail to Court and back.

17.Where the police or the jail authorities have well-grounded basis for drawing a strong inference that a particular prisoner is likely to jump jail or break out of the custody then the said prisoner may be produced before the Magistrate concerned and a prayer for permission to handcuff the prisoner be made before the said Magistrate. Save in rare cases of concrete proof regarding proneness of the prisoner to violence, his tendency to escape, he being so dangerous/ desperate and the finding that no other practical way of forbidding escape is available, the Magistrate may grant permission to handcuff the prisoner.

18.In all the cases where a person arrested by police, is produced before the Magistrate and remand - judicial or non-judicial - is given by the Magistrate the person concerned shall not be handcuffed unless special orders in that respect are obtained from the Magistrate at the time of the grant of the remand.

19.When the police arrests a person in execution of a warrant of arrest obtained from a Magistrate, the person so arrested shall not be handcuffed unless the police has also obtained orders from the Magistrate for the handcuffing of the person to be so arrested."

4.The Tamil Nadu Prison Manual Rule 831 deals with handcuffing which reads as under :-

"831.Handcuffing. - (1)Undertrial prisoners shall not be normally handcuffed except -

- (a)prisoner involved in serious and violent offences;
- (b)prisoners having notorious or dangerous background;
- (c)violent, aggressive and refractory prisoners; and
- (d)prisoners who have previously escaped or are suspected of having escape risks;

(2)Handcuffing of undertrial prisoners may be done at the discretion of the officer in charge of police escort.

(e)No undertrial prisoner shall be handcuffed when he is produced before the Court except with the permission of the Court."

5.We may note that the above rule is subject to the following directions of the Supreme Court in 1995(3) SCC 743 [cited supra]

in paragraph no.20, which is as follows :-

"20.Where a person is arrested by the police without warrant the police officer concerned may if he is satisfied, on the basis of the guidelines given by us in para above, that it is necessary to handcuff such a person, he may do so till the time he is taken to the police station and thereafter his production before the Magistrate. Further use of fetters thereafter can only be under the orders of the Magistrate as already indicated by us".

6.The Habeas Corpus Petition is disposed of with direction that all ranks of Police and Prison Authorities in the State are to meticulously obey the above directions of the Supreme Court. As held by the Supreme Court, any violation of the directions issued by the Supreme Court would amount to contempt of Court apart from other penal consequences under law. The HCP is disposed of with a direction for strict observance of the above directions of the Supreme Court.
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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.Superintendent of Police,
Central Prison, Chennai.

2.The Public Prosecutor, High Court, Madras

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nm(25.08.07)

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